Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF GREAT PLAINS COMMUNICATIONS

Great Plains Communications ("Great Plains" or the "Company") respectfully submits these Reply Comments regarding its Petition for Waiver, which seeks relief from an extreme increase of switched access rates as a result of leaving the National Exchange Carrier Association ("NECA") traffic sensitive pool.[1]

Comments filed in response to the Public Notice[2] confirm that special circumstances exist and granting the requested relief is in the public interest.[3] Indeed, a diverse set of commenters from Verizon, to USTelecom, ITTA—The Voice of America's Broadband Providers ("ITTA"), Consolidated Companies, Inc. ("Consolidated"), and the Nebraska Public Service Commission ("NPSC") agree that a nearly 150% increase in switched access rates not

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[1] Petition of Great Plains Communications for Waiver of 47 C.F.R. § 51.909(a)(4)(ii)(A) and 47 C.F.R. § 51.919(b), WC Docket No. 10-90, CC Docket No. 01-92 (June 21, 2017) ("Petition"). Great Plains filed a Clarification to suggest that the Commission could grant the requested relief by waiving §51.909(a)(4) and capping Great Plains' rates at their June 30, 2017 rates in lieu of using Great Plains' actual revenues from 2011-2012 to calculate its rate change factor for its 2017-2018 rates, *see* Clarification of Great Plains Communications Petition for Waiver of 47 C.F.R. § 51.909(a)(4) and 47 C.F.R. § 51.917, WC Docket No. 10-90, CC Docket No. 01-92 (July 27, 2017) ("Clarification"). Throughout these Reply Comments, Great Plains refers to the Petition and Clarification interchangeably, and collectively refers to both filings as the "waiver."

[2] *Wireline Competition Bureau Seeks Comment on Petition for Waiver from Great Plains Communications*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 5139 (WCB 2017).

[3] *See* 47 C.F.R. § 1.3 (permitting the Commission to grant a waiver for good cause shown if, after considering all relevant factors, a waiver is in the public interest). Among other things, a waiver is appropriate where "unique or unusual factual circumstances" mandate a waiver to avoid an application of the rule that would be "inequitable, unduly burdensome or contrary to the public interest." 47 C.F.R. § 1.925(b)(3)(i)-(ii); *see also* Clarification at 5.

only undermines the transition to bill-and-keep, but could also exacerbate rural call completion problems and increase rates to consumers and businesses in Nebraska. Although a few commenters raise questions about the implications of granting the requested waiver on the overall rate-of-return budget, such concerns are misplaced, do not relate to the merits of the unique circumstances presented here, and are best addressed in the context of other pending proceedings rather than a waiver request. As a result, Great Plains urges the Commission to act expeditiously and grant Great Plains' requested relief.

I. The Record Makes Clear that Great Plains' Request is in the Public Interest and Should Be Granted.

Comments expressed broad support for granting Grant Plains' request and highlight the special circumstances that justify granting the waiver. For example, Verizon states that "[t]he very large increase in Great Plains' rates – 148 percent – provides the requisite special circumstances justifying waiver of the Commission's rules."[4] ITTA agrees that special circumstances exist, citing the "unique and shocking"[5] magnitude of the sudden increase in rates and the distinctive "characteristics of Great Plains' network that contribute to the drastic rates surge."[6]

The NPSC, Verizon, USTelecom, and Consolidated all agree that granting the waiver avoids undermining the Commission's comprehensive intercarrier compensation reforms. According to the NPSC, "the application of the Commission's rules on Great Plains appears to be inconsistent with the policy objectives in the Transformation Order."[7] And, it is also in

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[4] Verizon Comments, WC Docket No. 10-90, CC Docket No. 01-92 at 4 (July 31, 2017) ("Verizon Comments").

[5] Comments of ITTA – The Voice of America's Broadband Providers , WC Docket No. 10-90, CC Docket No. 01-92 at 3 (July 31, 2017) ("ITTA Comments").

[6] ITTA Comments at 4.

[7] Nebraska Public Service Commission Comments, WC Docket No. 10-90, CC Docket No. 01-92 at 1 (Aug. 4, 2017) ("NPSC Comments"); *see also In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,933-34 ¶¶ 800-801 (2011) (capping all interstate switched access

tension with similar efforts by the NPSC to reduce access charges in Nebraska.[8] Verizon similarly notes that "a 148 percent rate increase is clearly inconsistent with the rate cap policy."[9] And Consolidated adds that Great Plains' "significant switched access rate increase … contradicts the Commission's stated policy."[10]

The record supports capping Great Plains' switched access rates as a way to ensure consistency with the goals of the *USF/ICC Transformation Order*, "achieve greater efficiency in operation of telecommunications networks as customers move from voice to broadband service,"[11] and to avoid creating new opportunities for the transport arbitrage described therein.[12] Indeed, as both Verizon and USTelecom note, the Wireline Competition Bureau ("Bureau") likely did not anticipate that its 2013 decision adopting rules for carriers exiting the NECA pool would permit such a drastic increase in switched access rates. Verizon also points out that the ability for switched access rates to increase when a provider leaves the NECA pool also may not have been intended by the Bureau because "it is likely that the Bureau expected most LECs leaving the NECA pool to be net contributors that would reduce their rates."[13] Thus, both USTelecom and Verizon point out that the Bureau's rule is likely beyond the scope of the Bureau's delegated authority.[14] Indeed, rather than providing a "technical" clarification within

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rates, including originating access and all transport rates, for rate-of-return carriers) ("*USF/ICC Transformation Order*"); Verizon Comments at 4.

[8] NPSC Comments at 1.

[9] Verizon Comments at 4.

[10] Comments of Consolidated Companies, Inc., WC Docket No. 10-90, CC Docket No. 01-92 at 2 (July 31, 2017) ("Consolidated Comments").

[11] Consolidated Comments at 2.

[12] Verizon Comments at 4.

[13] Verizon Comments at 3 n.16.

[14] Verizon Comments at 4 ("[n]otably, the *NECA Pool Order* was adopted by the Bureau, which does not have the authority to undercut the *Transformation Order*'s rate cap policy; the Bureau only has the authority to make sure 'the reforms adopted in [the *Transformation Order*] are properly reflected in the rules.'" (quoting *USF/ICC Transformation Order*, 26 FCC Rcd at 18,149 ¶ 1404) (bracket in original)); Comments of USTelecom Association, WC Docket No. 10-90, CC Docket No. 01-92 at 2 (July 31, 2017) ("USTelecom Comments") ("[i]n 2013, without much record support, the Bureau issued an Order that arguably exceeded its delegated authority."); *see* USTelecom

the scope of its delegated authority, the Bureau's 2013 decision is now undermining the entire goal of the *USF/ICC Transformation Order* and migration to bill-and-keep. Such a large increase in switched rates was thus likely not anticipated by the Bureau.[15]

Commenters further agree that the waiver will serve the public interest by promoting the Commission's goal to ensure calls to rural areas are completed.[16] The NPSC expresses concern that, absent a waiver, "[h]igher rates will increase the incentive for call blocking activities by carriers wanting to avoid these additional costs."[17] USTelecom similarly urges the Commission to grant the waiver because such an increase in switched access rates "could further exacerbate rural call completion problems by creating an even greater incentive for providers to use network routing practices that result in blocked or uncompleted calls."[18] Similarly, ITTA notes that such a large rate increase in intercarrier compensation rates "would be particularly ironic at a time when the Commission is seeking comment on new measures to mitigate rural call completion problems."[19]

Comments at 2 (noting that the rule adopted by the Bureau "effectively undermin[es] the Commission's reforms by waiving the *USF/ICC Transformation Order*'s cap on switched access rates.").

[15] A related concern with the rule is that lack of predictability. Because Great Plains expected that such forecast would be similar to Great Plains' actual revenues for 2011-2012, it did not anticipate that the NECA forecast would lead to a large rate increase, and, indeed, the Company lacked any information to conclude otherwise. Indeed, if Great Plains' actual switched access revenues from 2011-2012 were used in the rate change factor calculation, Great Plains' traffic sensitive switched access rate caps would have *decreased* slightly. *See* Petition at 4. Great Plains understands that NECA may have created a 2011-2012 forecast for the pool as a whole, and not for individual companies within the pool, to determine the rate increase factor for companies exiting the pools. But, carriers have no insight into how the 2011-2012 forecast was calculated or how NECA calculates an individual 2011-2012 forecast when carriers leave the pool. Thus, contrary to the SDTA, such result was not foreseeable. *See* Opposition of the South Dakota Telecommunications Association, WC Docket No. 10-90, CC Docket No. 01-92 at 2 (July 31, 2017) ("SDTA Opposition"). The lack of predictability is a concern. Indeed, USTelecom urges the Commission to "consider adopting policies that provide more transparency into NECA's rate recalculation methodology to enable carriers to have better insight into NECA's calculations." USTelecom Comments at 5. Had Great Plains known or had reason to know that its rates would have increased so dramatically, such information would have been factored into its decision to leave the traffic sensitive pool.

[16] *See* Clarification at 7-8; Petition at 6.

[17] NPSC Comments at 1.

[18] USTelecom Comments at 4.

[19] ITTA Comments at 3.

Moreover, the record makes clear that a waiver is necessary to avoid potential significant rate increases for consumers and businesses.[20] The NPSC expresses concern that "Nebraska customers may pay higher rates due to these rate increases."[21] ITTA also explains that without a waiver, customers will face a "potential rate shock" at a time when the Commission is seeking comment on whether to abolish the rate floor, which requires carriers that do not charge consumers a specified minimum amount for voice service to forfeit portions of their universal service support.[22] Indeed, the Commission recently noted in freezing the rate floor that even a $2 increase in local rates "would have a significant impact on consumers, particularly in rural areas."[23] And, as Great Plains has explained, an increase here could be much more significant.[24]

Finally, USTelecom notes that the waiver is consistent with the goals of the Commission's recent order in its business data services ("BDS") proceeding.[25] USTelecom and ITTA recently filed a petition for rulemaking in the BDS docket requesting that model-based rate-of-return carriers be permitted to opt into existing price cap regulation for their provision of BDS.[26] USTelecom asserts that both its rulemaking petition and the waiver encourages carriers to move to more efficient regulation, which "[i]n the case of the rate-of-return providers…frequently requires leaving the NECA pool."[27] USTelecom argues that by leaving the NECA pool, "Great Plains can provide more competitive and lower rates to consumers and

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[20] *See* Clarification at 8-9; Petition at 5-6.
[21] NPSC Comments at 1.
[22] ITTA Comments at 3-4 (citing *Connect America Fund*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 4509 (2017)).
[23] *In re Connect America Fund*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 4509, 4515 ¶ 16 (2017).
[24] Clarification at 8-9.
[25] USTelecom Comments at 3 (citing *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459 (2017)).
[26] USTelecom Comments at 3 (citing ITTA and USTelecom Petition for Rulemaking, WC Docket No. 17-144 (filed May 25, 2017)).
[27] USTelecom Comments at 3.

businesses."[28] The record therefore makes clear that good cause exists to grant Great Plains a waiver.[29]

II. Concerns about Impact on the Budget Are Misplaced and Beyond the Scope of the Waiver.

A few commenters allege that the waiver will increase Great Plains' Connect America Fund – Intercarrier Compensation ("CAF-ICC") support, and as a result, impact the rate-of-return budget.[30] Such concerns are misplaced and relate to broader industry-wide issues, not the merits of the instant waiver.

As a threshold matter, as Verizon explains, the waiver would merely "preserve the status quo."[31] Grant of the requested waiver thus will not put Great Plains in the position to "take away" CAF-ICC support or somehow "game" the system. With or without the waiver, Great Plains will receive the same amount of Eligible Recovery.[32] The issue is whether Great Plains receives its Eligible Recovery from a combination of CAF-ICC support and interexchange carriers or whether the recovery is shifted to interexchange carriers and ultimately consumers in Nebraska. Great Plains is not asking for more CAF-ICC than it would have received had it not left the NECA pool. This is not "new" money, nor is it taking away CAF-ICC support from other carriers. Thus, statements about potential "found" CAF-ICC money are misguided.

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28 USTelecom Comments at 3.

29 *See* 47 C.F.R. § 1.3 (permitting the Commission to grant a waiver for good cause shown if, after considering all relevant factors, a waiver is in the public interest). Among other things, a waiver is appropriate where "unique or unusual factual circumstances" mandate a waiver to avoid an application of the rule that would be "inequitable, unduly burdensome or contrary to the public interest." 47 C.F.R. § 1.925(b)(3)(i)-(ii); *see also* Clarification at 5.

30 *See* Comments of NTCA–the Rural Broadband Association, WC Docket No. 10-90, CC Docket No. 01-92 at 2 (July 31, 2017) ("NTCA Comments"); Comments of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, CC Docket No. 01-92 at 4 (July 31, 2017) ("WTA Comments"); SDTA Comments at 3.

31 *See* Verizon Comments at 4.

32 *See* Clarification at 4 ("This increase is irrelevant to Great Plains' ultimate revenues, since its total recovery is capped.").

Moreover, as noted above, the expressed concerns are misplaced as a policy matter. Increasing switched access charges (particularly at such drastic levels here) is inconsistent with the Commission's intercarrier compensation reforms, undermines efforts to address rural call completion concerns, and could result in large increases in residential and business rates in Nebraska. These results do not serve the public interest.

Concerns relating to the implementation of the overall budget for rate-of-return carriers and related budget controls do not relate to the merits of the Petition and should be addressed in an industry-wide proceeding.[33] Nor has the Commission ever considered the impact on the rate-of-return budget, even though it has granted previous ICC waivers that did increase a carriers' eligible recovery (which will not occur here) and therefore increased their CAF-ICC.[34] Doing so here therefore would be a departure from precedent. And, in any event, increasing Great Plains' switched access rates with a corresponding reduction in its CAF-ICC will have de minimis, if any impact, on other carriers and cannot "solve" the budget issue. Indeed, this solution only shifts costs to consumers and undermines other Commission policy objectives.

Finally, speculative concerns about potential "me-too" waiver petitions[35] do not provide a basis for denying the requested relief. The Commission cannot, consistent with precedent,

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[33] To the extent the Commission is concerned about the impact of the waiver on other companies subject to the rate-of-return budget, it is possible that solutions exist that would allow the Commission to grant the waiver without affecting other rate-of-return carriers. For example, WTA highlighted a potential solution where the Commission could grant the Great Plains waiver, but hold that "none of the increases in CAF-ICC support resulting from such waivers will be included in or otherwise affect the calculation of the budget adjustment factor" with respect to the budget control mechanisms. *See* WTA Comments at 6.

[34] *See In re Connect America Fund: Developing a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules*, Order, 29 FCC Rcd 9958 (2014) ("*Halo Waiver Order*"); *In re Connect America Fund: Developing a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917(b)(7) of the Commission's Rules*, Order, 30 FCC Rcd 6430 (WCB 2015); *In re Connect America Fund*; *Developing a Unified Intercarrier Compensation Regime*, *Petitions for Waiver of Section 51.917 of the Commission's Rules*, Order, 31 FCC Rcd 12,021 (2016); *In re Connect America Fund: Developing a Unified Intercarrier Compensation Regime, Petitions for Waiver of Section 51.917 of the Commission's Rules*, Order, 32 FCC Rcd 5456 (2017).

[35] *See* SDTA Opposition at 3; NTCA Comments at 3; WTA Comments at 1.

deny Great Plains' request out of concerns about potential future waiver requests. Indeed, the Commission has rejected arguments that "the potential for similarly situated carriers to file 'me too' petitions is a basis for rejecting the waiver requests."[36] Great Plains has no knowledge of any other carrier planning to seek a similar waiver. But, even if other carriers do file, they would need to establish good cause and special circumstances. And, such concern cannot justify denying Great Plains relief.

III. Conclusion

Great Plains has clearly shown that good cause exists to grant the waiver and is supported by the record. Thus, Great Plains urges the Commission to expeditiously grant the requested relief to avoid undermining key Commission policies and increasing rates in rural areas.

Respectfully submitted,

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[36] *Halo Waiver Order*, 29 FCC Rcd at 9965 ¶ 22 n.55; *see also id.* (noting that whether other carriers may seek similar relief in the future "does not address whether it is reasonable or in the public interest to grant a waiver.")